

REMARKS

Claims 56, 57, 59, 95 and 97 are in the application. Claims 56, 57, 59, 95 and 97 are hereby amended. The claims have been amended to affirmatively recite certain elements in the body of the claims (rather than in the preamble). No claims are added, and no new matter has been added. Reconsideration and allowance of the present claims are respectfully requested.

Applicants respectfully submit that the pending claims are allowable. Applicants have had several interviews with the Examiner in which the Examiner has indicated that claims would be allowable. A further interview was requested after the mailing date of the present office action; however, the Examiner denied the request, as the present office action is a final office action. Applicants submit a request for continuing examination herewith, and respectfully request that an interview be granted.

The Examiner states that the preamble in each of the claims "contain [a] statement of intended use." (Final Office Action at page 3). Applicants respectfully disagree; however, whether or not the preambles contain a statement of intended use, the fact is that the body of the claims recite features which are not taught or suggested by the art of record, alone or in any permissible combination. The claim preamble must be read in the context of the entire claim. The determination of whether preamble recitations are structural limitations or mere statements of purpose or use "can be resolved only on review of the entirety of the [record] to gain an understanding of what the inventors actually invented and intended to encompass by the claim." *Corning Glass Works*, 868 F.2d at 1257, 9 USPQ2d at 1966. Here, Applicants have discovered a computer-implemented method (such as recited in independent claim 56) in which a computer creates a proxy portfolio that does not reveal the assets of a traded fund, and that has substantially the same sensitivity coefficients of the traded fund. A computer system calculates the estimated value of the traded fund based on the value of the proxy portfolio, where the identities of the assets of the traded fund are not publicly disclosed on a daily basis to an investor

who trades shares of the traded fund on a secondary market. The computer-implemented method publicly discloses the estimated value of the traded fund periodically throughout a trading day.

Whether the preamble contains a statement of intended use is irrelevant, as the body of the claim recites clear limitations which are not taught or suggested by the cited art, alone or in any permissible combination. However, to advance the case, the claims have been amended to more clearly recite certain elements in the body of the claim rather than relying on the preamble.

The Examiner continues to reject the claims under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 5,799,287 (“Dembo”), in view of U.S. Patent Application Publication No. 2002/0143676 (“Kiron”), further in view of U.S. Patent No. 5,138,365 (“Dembo 2”), or alternatively Kiron in view of Dembo, in further view of Dembo 2.

As discussed in numerous earlier responses and inventor declarations, none of the cited references (alone or in any permissible combination) teach or suggest a system or method that (i) creates a proxy portfolio that does not reveal the assets of a traded fund, and that has substantially the same sensitivity coefficients of the traded fund, (ii) calculates the estimated value of the traded fund based on the value of the proxy portfolio, where the identities of the assets of the traded fund are not publicly disclosed on a daily basis to an investor who trades shares of the traded fund on a secondary market, or (iii) publicly discloses the estimated value of the traded fund periodically throughout a trading day.

To the extent Applicants understand the Examiner’s rejections (which appear to relate to the Examiner’s assertion that certain claim elements are simply statements of intended use that are given no patentable weight), the claims as amended address those issues. Applicants’ prior responses and affidavits regarding the differences between the cited art and the instant invention are hereby reiterated and incorporated herein. All claims are believed patentable over the cited references, alone or in any combination.

C O N C L U S I O N

Accordingly, Applicants respectfully request allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-0081.

Respectfully submitted,

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